

SEP 26 1989

CERTIFIED MAIL

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code of 1986.

The information discloses that you were incorporated under the laws of the [REDACTED] on [REDACTED].

Your primary stated purposes in your Articles of Incorporation are: to protect and presentation of the [REDACTED] located in [REDACTED] the planning and development of programs to maintain the appearance and value of property in [REDACTED] Subdivision, programs which encourage property owners to comply with applicable restrictive covenants designed to protect the appearance of [REDACTED] and to maintain the quality of life within the community, the development of programs and activities designed to promote common commitment to the needs of the community, the provision through the Corporation of a forum for communications and information concerning future development of the subdivision and common concerns and problems facing residents and owners, the promotion of neighborhood security and public safety through programs such as the neighborhood watch, the development, maintenance and management of recreational facilities and activities for use of the membership, and the promotion of social activities designed to promote a sense of community.

Your By-laws stated that membership in your association shall be open to all persons who have reached the age of majority and who reside or own property in the geographical area of [REDACTED] known as [REDACTED] and any adjoining areas as the association shall approve, and who shall thereafter pay the proper initiation fees, annual dues, and assessments.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	[REDACTED]	[REDACTED]	[REDACTED]			
Surname	[REDACTED]	[REDACTED]	[REDACTED]			
Date	5/3/89	5/10/89	10/25/89			

Form 1937-A (Rev. 6-80) Correspondence Approval and Clearance

Department of the Treasury/Internal Revenue Service

[REDACTED]

You stated, "The common grounds consist of a wooded recreation area fronting [REDACTED] (a copy of the plat is attached) and a grassy median strip near the entrance to the subdivision. The organization cuts the grass and other vegetation at the common areas and maintaining the running and exercise trails. The recreation areas are open to the membership and invited guests but are not open to the general public. The grassy median strip is open to the general public. The subdivision is open to the general public."

Further, you stated at your Executive Board Meeting of [REDACTED], "no one who is not a member of the Association will not have a key to access the new gate and therefore will not be allowed to go on the recreation property."

Your income is primarily from monies contributed by members. Members will contribute to the organization through annual dues and in response to special pleas for special projects such as clean up efforts, planting and the neighborhood watch. Contributions will also be solicited from area businesses and organizations which indicated a desire to support the efforts of the organization. Expenses are for insurance, grass cutting, membership meetings and social functions for members, and postage, copies and miscellaneous.

Section 501(c)(4) of the Code provides for the recognition of exemption from federal income tax of civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 69-230, published in Internal Revenue Cumulative Bulletin 1969-1, page 152 holds that a non-profit corporation formed for the purpose of providing specified services for the homeowners in a housing development is not exempt as a 501(c)(4) social welfare organization. A purchaser of a unit in the housing development was required to become a member. The organization was supported entirely by annual dues charged members. It was determined that the organization was performing services that its members would otherwise have to provide for themselves and that the organization was operated primarily for the private benefit of its members.

Revenue Ruling 72-102, 1972-1 C.B. page 149, states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for use of the residents is exempt under section 501(c)(4) of the Code. Membership is required of all owners of real property in the development, and assessments are levied to support the organizations activities. It was held that by maintaining the property normally maintained by a municipal government, the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, 1974-1 C.B. page 131, modified Revenue Ruling 72-102 by stating guidelines under which a homeowner's association could qualify for exemption under section 501(c)(4) of the Code. These guidelines are:

1. The organization must service a "community" which bears a reasonable, recognizable relationship to an area ordinarily identified as a governmental unit.
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas or facilities must be for the use and enjoyment of the general public.

This ruling states that a community, within the meaning of section 501(c)(4) of the Code and the regulations, "...is not simply an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein." Revenue Ruling 74-99 rejected the relevance of the size of the development served in determining whether the organization benefits a "community".

By making membership mandatory in the Association for property owners, there is an essential purpose by the organization to serve the private property interests of the members. Therefore, the class of persons who are benefited by the organization is substantially the same as the class of persons who are members of the organization.

Revenue Ruling 74-99 states that Revenue Ruling 72-102 "...was intended only to approve ownership and maintenance by a homeowners' association of such areas as roadways and parklands, sidewalks, and street lights, access to, or the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners' association...."

[REDACTED]

The limitation on access to Association property to those persons who have an enforceable right or permission to gain access involves primarily the exercise of private property rights for private benefit, and is therefore inconsistent with community benefit.

In Flat Top Lake Association, Inc. Plaintiff v. United States of America, Defendant. 86-2 USTC paragraph 9756 states in part that "A homeowners' association was not entitled to exempt status as a civil league or organization under Code Section 501(c)(4). The association did not provide benefits of a public welfare nature to the public or a definable community because the association's facilities were restricted to the use of its members."

Your recreational areas are not open for the use and enjoyment of the general public. Your activities are also carried on for the limited benefit of your members. You are, therefore, operating for the private benefit of your members, and not for the benefit of the general welfare of any community. Therefore, you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Code.

Until you have established an exempt status, you are not relieved of the requirement for filing Federal income tax returns.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a non-exempt homeowners association may elect not to be taxed on its "exempt function income" which includes membership dues, fees or assessments from owners of real property. The election is made by filing Form 1120H. If you determine that your organization qualifies under section 528, you may find it beneficial to make this election.

[REDACTED]

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or if you request, at any mutually convenient District Office. If we do not hear from you within 30 days of the date of this letter, this determination will become final.

Sincerely yours,

[REDACTED]  
District Director

Enclosure: Publication 892